

VZCZCXYZ0001
PP RUEHWEB

DE RUEHDG #3521/01 3201841
ZNR UUUUU ZZH
P 161841Z NOV 06
FM AMEMBASSY SANTO DOMINGO
TO RUEHC/SECSTATE WASHDC PRIORITY 6672
INFO RUEHZA/WHA CENTRAL AMERICAN COLLECTIVE PRIORITY
RUEHWN/AMEMBASSY BRIDGETOWN PRIORITY 1995
RUEHCV/AMEMBASSY CARACAS PRIORITY 0702
RUEHGE/AMEMBASSY GEORGETOWN PRIORITY 0919
RUEHKG/AMEMBASSY KINGSTON PRIORITY 2674
RUEHPO/AMEMBASSY PARAMARIBO PRIORITY 1052
RUEHPU/AMEMBASSY PORT AU PRINCE PRIORITY 4399
RUEHSP/AMEMBASSY PORT OF SPAIN PRIORITY 1741
RUEAIIA/CIA WASHINGTON DC PRIORITY
RHEFDIA/DIA WASHDC PRIORITY
RUEHC/DEPT OF LABOR WASHDC PRIORITY
RUEATRS/DEPT OF TREASURY WASHDC PRIORITY
RUCPDO/USDOC WASHDC PRIORITY 1592
RUCOWCV/CUSTOMS CARIBBEAN ATTACHE MIAMI FL PRIORITY
RUEFHLC/HQS DHS WASHDC PRIORITY
RUMISTA/CDR USSOUTHCOM MIAMI FL PRIORITY

UNCLAS SANTO DOMINGO 003521

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STATE FOR WHA, WHA/CAR, INR/IAA; USSOUTHCOM ALSO FOR POLAD;
TREASURY FOR OASIA-JLEVINE; DEPT PASS USDA FOR FAS; USDOC
FOR 4322/ITA/MAC/WH/CARIBBEAN BASIN DIVISION; USDOC FOR
3134/ITA/USFCS/RD/WH; DHS FOR CIS-CARLOS ITURREGUI

E.O. 12958: N/A

TAGS: [DR](#) [EAID](#) [ECON](#) [PGOV](#) [PHUM](#) [SMIG](#)

SUBJECT: DOMINICAN POLITICS III #10: FERNANDEZ'S BIG
PICTURE - CONSTITUTIONAL REFORM

¶1. (U) This is the tenth cable in our series on Dominican
politics in the third years of the administration of
President Leonel Fernandez.

¶2. (SBU) Summary: President Fernandez has initiated a
program to reform the constitution of the Dominican Republic,
seizing the opportunity presented by a two-thirds majority in
the Senate and simple majority in the House of
representatives. Fernandez argues that the current
constitution does not adequately address the issues of civil
rights, electoral supervision, presidential prerogatives, and
judicial review. He asserts that in the worst of cases, it
would not bar the return of dictatorship. The government will
probably elaborate a more defensible constitutional denial of
citizenship to children born to foreigners in the Dominican
Republic, a change that will especially affect offspring of
Haitian migrants. The opposition quibbles at the process but
is otherwise generally indifferent. Fernandez is far more
comfortable with this "big picture" important, abstract and
intellectual project than with the exhausting, conflictive
business of making government work. The campaign for the May
2008 presidential election may mean that this reform project
fades away, as did a similar blue-ribbon undertaking in 2001.
End summary.

A Modern State

¶3. (U) On October 9 Dominican President Leonel Fernandez
opened his project to reform the Dominican constitution with
an lengthy and erudite speech at the Autonomous University of
Santo Domingo. The President postulated that this time
constitutional reform is not a new initiative of the ruling
Dominican Liberation Party (PLD). Rather, "We are putting
forward an idea that has been pending for a long time on the
agenda of national reform."

¶4. (U) Fernandez characterized his final goal as "a modern state that is agile, flexible, and transparent and that responds to the needs and requirements of a world in transition.... A world of global integration, a world that has new challenges, new demands, and new necessities." In the following weeks, an Executive Commission for the Constitutional Reform Process published a booklet with 77 constitutional questions and invited public comment on them at a series of public forums around the country and via a website (www.consultapopular.gov.do).

Trujillo Looms

¶5. (SBU) The memory of dictatorship is strong in the Dominican Republic. The quasi-totalitarian rule of General Rafael Trujillo lasted from 1930 to 1961 and was followed by the often authoritarian presidencies of Joachin Balaguer, who controlled the Dominican state for 22 of 30 years from 1966 to 1996. Fernandez himself can be considered a transitional figure, having been elected following Balaguer's final term, a truncated two-year period that was the result of a negotiated settlement to the widespread electoral fraud of the 1994 election.

¶6. (U) In this context today Fernandez argues for the strengthening of civil rights. The President voiced particular preoccupation with the lack of a constitutional definition of the right to the presumption of innocence, and he argued for the strengthening of the and right to habeas corpus and the office of the Ombudsman. As an example, Fernandez criticized the security services' "common practice"

of taking citizens in for questioning after they make public statements critical of the government agencies. With these changes, the President says, his goal is to "arm Dominican society for the future... (and) protect this country against any dictatorship that could come."

¶7. (U) With six years in presidential office, Fernandez also seeks to devolve some powers he considers a burden on the presidential schedule, such as the approval of tax exonerations. Fernandez spoke of the institutional obstacles to delegation and commented that the "last straw" came when advisors informed him that only the President could authorize a minor project to fix the elevators in the Palace.

Nationality

¶8. (SBU) Nationality is an important issue in this country, from where many Dominicans have emigrated to the United States and elsewhere, and where there is a steady influx of illegal immigrants from Haiti. The Dominican constitution grants citizenship to individuals born in the country (the "jus solis" principle); however, there is an exception for persons whose parents are "in transit," which the Government -- with the Supreme Court's blessing -- uses to deny citizenship to children born to foreigners who are undocumented or have only temporary work or travel authorization.

¶9. (SBU) While Fernandez was not explicit regarding his goals for changing the constitutional article on nationality, he appeared to question jus solis, arguing that it "has always been a concept used in countries that had wanted to attract migration.... Each state defines (nationality) as it understands it and no one can see this as racism or xenophobia." Appearing to favor the "jus sanguinis" principle (acquisition of nationality based on origin of parents, regardless of location) -- which benefits Dominicans born abroad -- Fernandez argued for the strengthening of dual-nationality and the transmission of Dominican nationality to second and third generations abroad.

¶10. (U) Fernandez supports efforts to increase the participation of the Dominican expatriate community in local

politics and development. In July he suggested that his constitutional reform agenda would include the allocation of congressional representation to Dominicans living overseas. Studies have estimated that in 2000 more than a million Dominicans (equivalent to more than 10 percent of the country's current population) resided in the United States alone.

Constructing a New Democracy

¶11. (U) In his speech, the President also recommended changes to the constitutional articles on electoral supervision and judicial review, and argued strongly -- and at some length -- that a preamble should be added to the charter that "establishes the Dominican Republic as a social democratic state based on law." Fernandez wrapped up his address with a plea for support, saying that, "We all know that, because of our history, there is much skepticism and lack of confidence (in the Government) and we understand that and admit it. All that we ask is that you give us the opportunity to demonstrate that we are constructing the edifice of a new democracy in the Dominican Republic, and that all of us will do it together.... That is democracy) pluralism and the diversity of ideas."

Reactions

¶12. (SBU) Since amendments to the constitution require a two-thirds vote in both houses of Congress, Fernandez will need the opposition's support in the House of Representatives, where his PLD party holds only 54 percent of the seats. The Dominican Revolutionary Party (PRD), the country's second largest party, declined to attend the President's speech, but otherwise seems not to have focused on this issue, at least not yet. The PRD did argue that any reform to the charter should not be carried out by the current Congress (where they lost a long-held majority in the May 2006 election) but rather by a Constituent Assembly. This view is shared by the prominent civil society organization Participacion Ciudadana. It should be noted that a constituent assembly is not currently a constitutional option; indeed, Participacion Ciudadana argues that the reforms that Fernandez proposes are not so urgent that they should not precede a reform to allow for a constituent assembly (which would presumably allow for the direct participation of citizen groups). Fernandez's reply to his critics is that the Congress was elected only six months ago and therefore represents the will of the people; in any event, the President contends, a Constituent Assembly would also be an elected body subject to the political process.

¶13. (U)Noted commentator Juan Bolivar Diaz questioned the value of the constitutional reform exercise, arguing that longstanding national traditions are the source of threats to democracy. Diaz wrote "The roots of authoritarianism are not based in Article 55 of the Constitution (regarding presidential powers), but rather in the tradition that confers upon the President the ability to disregard the magna carta and national laws and simply to stipulate at his convenience or whim." Regarding the PRD, Diaz termed the party "hypocritical" for demanding the formation of a constituent assembly, recalling that in 2002 PRD President Hipolito Mejia and a PRD-majority Congress pushed through an amendment to allow Mejia to run for a second term.

Comment

¶14. (SBU) We take President Fernandez at his word when he says that it is important to the Dominican Republic to reform its constitution. Coming from a former law professor and founder of an important think tank, his arguments are strong. Constitutional reform is an intellectual pursuit, and therefore attractive to this president. The "vision thing" is his thing, and in this case it is more easily

accomplished than the knottily complex national issues that require close attention, management, and personal confrontation. Examples are exposing and combating corruption, making many reluctant parties undertake the actions needed for implementation of the free trade agreement, facing down the statists in the electricity sector, ending subsidies, and reordering spending.

¶15. (SBU) Regarding the hot-button issue of nationality for those born in the country, Fernandez is unwilling to challenge the xenophobic view that residents of Haitian origin and their offspring will never be eligible for consideration as Dominicans. An evident example is the project of the Migration Council, elaborated in mid-2005 but left to wither: under hard-liner Interior Minister Franklin Almeyda, the council proposed draft regulations mandating a census that would identify illegals having lived in the

country for more than ten years, with a view to authorizing residence papers for them. Dominicans are comfortable with doublethink on nationality, even though many, through parents legally or illegally in the United States, obtained dual citizenship by birth in U.S. territory.

¶16. (SBU) The May 2008 presidential campaigning could put a stop to the Fernandez constitutional project. A similar blue ribbon consultative undertaking chaired in 2001 by mediator Msgr Agripino Nunez fizzled out. The President's "big picture" approach of formal consultation of the public nationwide before drafting amendments has begun; it promises to be time-consuming and inefficient. He will have to obtain a two-thirds majority in Congress. If he is able to achieve the goal of fortifying this young democracy, he will be applauded by all; if he can't manage the government better than he has to date, constitutional reform may not make much difference.

¶16. (U) Drafted by Peter Hensch, Michael Meigs.

¶17. (U) This report and extensive other material can be consulted on our SIPRNET site,
<http://www.state.sgov.p/wha/santodomingo/>
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